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IN THE  
**Supreme Court of the United States**

October Term, 1951

No. 801

87

UNITED STATES OF AMERICA,

*Petitioner,*

v.

EDWARD A. RUMELY,

*Respondent.*

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**SUPREME COURT, U. S.**

On Petition for Writ of Certiorari to the United States  
Court of Appeals for the District of Columbia

**BRIEF FOR THE RESPONDENT IN OPPOSITION**

(With Appendix reprinting opinions below)

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**OPINIONS BELOW**

The opinions in the Circuit Court of Appeals reversing the order and judgment of the District Court and remanding the case to the District Court with instructions to dismiss the indictment are not yet reported. (R. 193-224). For convenient reference the opinions are reprinted as an Appendix to this Brief.

**JURISDICTION**

The decision of the Court of Appeals was rendered on April 29, 1952 (R. 224). The petition for a writ of certiorari was filed on May 28, 1952. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).)

## QUESTIONS PRESENTED

1. The first question is whether, under the guise of investigating "lobbying activities", Congress had power, or attempted, to authorize an inquiry and to compel testimony regarding private efforts to influence public opinion regarding federal legislation through the general sale and distribution of books and pamphlets.

2. The second question is whether a Committee of Congress, established for the purpose of investigating "lobbying activities", had constitutional authority (in the absence of any pretense that a "clear and present public danger" existed) to require a publisher, by subpoena or interrogatories, to disclose the names and addresses of purchasers of books published and distributed by him, particularly when the publisher had made available to the Committee all his financial records except the names and addresses of such purchasers.

3. The third question is whether in this criminal action for contempt of Congress there was any evidence sufficient to support a ruling as a matter of law that the names and addresses of purchasers of books published by respondent's employer (in quantities costing over \$500.00) were pertinent to the Committee's inquiry into "lobbying activities".

## STATUTE INVOLVED

R. S. 102, as amended, 52 Stat. 942, 2 U. S. C. 192, provides:

Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, . . . or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to

answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than \$1,000 nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.

### COUNTER STATEMENT OF THE CASE

The statement of the case presented by the petitioner is not the case which was tried in the District Court and is not the case which resulted in the decision of the Circuit Court of Appeals for the District of Columbia which is involved here.

Petitioner presents the statement of *one side* of a hypothetical case which was set up as the basis for the dissenting opinion of one judge of the Circuit Court of Appeals and which was characterized in the majority opinion as follows:

"We think our dissenting judge discusses a case not before us—issues not presented in the trial court or here, and facts not in evidence in this record."  
(R. 209 App. 23)

We submit that in a criminal case the proposition is insupportable that a conviction should be sustained on an argument that the defendant *might* have been convicted on charges and evidence that were never submitted to the jury.

The case actually tried and reviewed on appeal is accurately stated as follows:

The respondent, Edward A. Rumely, Executive Secretary for the Committee for Constitutional Government, Inc. (hereinafter described as the "C.C.G."), was subpoenaed to produce records and to testify, by the Select Committee on Lobbying Activities created by the House

of Representatives (hereinafter described as the Buchanan Committee).<sup>1</sup>

The report of the Buchanan Committee to the House<sup>2</sup> states that the C.C.G. distributed, among other things, millions of embossed copies of the Bill of Rights to schools and colleges, 600,000 copies of a book by Thomas James Norton entitled "Constitution of the United States", thousands of copies of a book by Irving G. McCann entitled "Why the Taft-Hartley Law", 130,000 copies of a book by Melchior Palyi entitled "Compulsory Medical Care and the Welfare State", approximately 750,000 copies of a book by John T. Flynn entitled "The Road Ahead", 250,000 copies of a book by John W. Scoville entitled "Labor Monopolies and Freedom".

The record indicates that about 85% of the books sold by the C.C.G. were in lots of from one to twenty copies and the remainder in bulk sales. Said bulk sales were by three methods: (a) the purchaser bought the books and distributed them; or (b) the purchaser furnished a list of persons to whom he wished the books sent and respondent's office made the distribution; or (c) the purchaser designated in general terms the distributees, such as 15,000 libraries, or 15,000 editors, and respondent's office made the distribution to a list in the designated category in its files. (R. 196).

In the course of its investigation, the Buchanan Committee served upon respondent two subpoenas containing a list of twenty-six items concerning which the Committee desired information. The twenty-sixth item in these subpoenas called for the names of all purchasers of books or pamphlets. *The respondent gave the investigators unlimited access to all the C.C.G. records*

<sup>1</sup> H. R. Res. 298, 81st Congress (R. 188).

<sup>2</sup> H. R. Rep. 3024, 81st Congress, Second Session (1950).

*except the names of the purchasers of books.* Pursuant to these subpoenas the respondent appeared before the Buchanan Committee and offered to supply all information requested except the names of the purchasers of books. In addition respondent refused to answer a specific question by the Buchanan Committee which required him to furnish the name of "a woman from Toledo" who purchased 4,000 copies of a book for distribution to named teachers and clergymen in Toledo, Ohio.

The respondent refused to furnish the names of the purchasers of the books on the ground that, in demanding it, the Buchanan Committee had exceeded whatever investigatory power it had possessed and it had no constitutional power to require the names and addresses of the purchasers of books published by C.C.G. He expressly asserted that such legislative compulsion would be in violation of the provisions of the First and Fourth Amendments and an unconstitutional abridgment of the freedom of the press.

Petitioner's statement that, "No question of the First Amendment is involved" (Pet. p. 16) is a misstatement of fact and law; and a curious aspersion upon all three judges of the Court of Appeals, since both the majority and the dissenting opinions held that a construction of the First Amendment was decisive of the case. The pretense that there is no abridgment of free speech or free press by public disclosures which focus class hatreds on individuals, which embarrass persons and deter them from buying books or listening to speeches, was thoroughly discredited in the opinion of the Court of Appeals:

"To publicize or to report to the Congress the names and addresses of purchasers of books, pamphlets and periodicals is a realistic interference with the publication and sale of these writings. . . . There

can be no doubt . . . that the realistic effect of public embarrassment is a powerful interference with the free expression of views." (R. 202-203 App. 14)

The Buchanan Committee reported the respondent's refusal to furnish the names of the purchasers to the House of Representatives which passed a resolution certifying the report to the United States District Attorney for action. In this report it was stated: (supra P. 2)

"The distribution of printed material to influence legislation *indirectly by influencing public opinion* is the basic function of the Committee for Constitutional Government". (Italics ours)

The respondent was indicted for contempt of Congress. After a trial, in which the court instructed the jury as a matter of law that the names of the purchasers of the books were pertinent to the Congressional inquiry, he was convicted and sentenced to pay a fine of \$1,000 and imprisonment for six months, with execution of the prison sentence suspended and respondent placed on probation. (R. 10).

On appeal, the judgment of conviction was reversed on the grounds which can be summarized as follows:

(a) Attempts to influence public opinion on national affairs by books, pamphlets and other writings, is one of the fundamental freedoms of speech and the press and Congress has no power to abridge these freedoms unless there is a clear and present public danger; and there is not even a suggestion that the sale and distribution of the books and documents involved here "constitutes any public danger, clear or otherwise, present or otherwise." (R. 201-203, App. 12-13)

(b) The term "lobbying activities" in the House Resolution establishing the Buchanan Committee, means "lobbying in its commonly accepted sense, and did not purport to convey power to investigate efforts to influence public opinion." (R. 205, App. 17).

(c). The Buchanan Committee had no authority to demand the names of purchasers of books "since the public sale of books and documents is not 'lobbying'". (R. 205, App. 18).

(d). The pertinency of the names of the purchasers of the books published and sold by the C.C.G. was not established by the evidence in the record. (R. 200 App. 10-11).

## REASONS FOR DENYING THE WRIT

### I

#### Congress Did Not Attempt to Authorize the Buchanan Committee to Investigate Efforts to Influence Public Opinion in Regard to Federal Legislation.

The Buchanan Committee was only authorized to investigate to the following extent:

✓ "the committee is authorized to conduct a study and investigation of (1) all lobbying activities intended to influence, encourage, promote or retard legislation; and (2) all activities of agencies of the Federal Government intended to influence, encourage, promote or retard legislation." (H. R. Res. 298, 81st Congress; R. 188).

Pursuant to its authority, the Buchanan Committee instituted an investigation of a number of organizations including the C.C.G. The respondent, the Executive Secretary of the C.C.G., made all its files and records available to the Buchanan Committee, except the names of the persons who purchased books. The respondent's refusal to furnish the names of the purchasers of the books which were published, sold and distributed by the C.C.G. is the sole basis of the indictment resulting in the case here involved. The petitioner is here claiming that the Buchanan Committee had the power to require

part upon the Buchanan Committee's alleged desire to probe into possible subterfuges in connection with the Lobbying Act, the financial records of the C.C.G. would have been relevant and material, yet *on the Government's objection the trial court excluded the financial data as immaterial.* (R. 200)

Similarly under any possible concept of "lobbying" or "subterfuge" it was "pertinent" to show what the book or books were that had been purchased, yet the Government urged and the trial court held that the books which had been offered in evidence by the respondent were inadmissible. (R. 99)

Even the majority of the Buchanan Committee in its General Interim Report to Congress admitted that the contents of the books which were excluded by the trial judge on the Government's urging when offered by respondent, were essential to a determination of the question of pertinency.

"The content of the publications concerned is, of course, important in determining whether or not the distributor may lawfully be required to disclose his source of support—either before this committee or pursuant to the Lobbying Act." (81st Congress, 2nd Session, House Report No. 3138, p. 32)

The Circuit Court of Appeals properly covered the subject when it stated:

"We turn first to that portion of the Buchanan Committee's Report which suggests that the Committee was seeking to ascertain whether subterfuges were being used to evade the Lobbying Act. It is clear to us that the point is not in the case as it was tried and as it is here. The statement of the Committee was that 'Because of the refusal \* \* \* to produce pertinent financial records, this committee was unable to determine' whether the Lobbying Act requires amendment to prevent subterfuges. But, as the case comes to us, there was no refusal to produce financial

records. Over and over again Rumely asserted before the Committee that he had given, and was willing to give, all records except the names and addresses of the purchasers of the books. No contention was made at those hearings that he refused to give anything else. Upon the trial the prosecutor did not say that anything else was refused. On the contrary, he urged a different view. He insisted, and the court sustained his view, that, so long as the names of purchasers of books were not given, financial records on contributions and loans were immaterial to the issues in the case. But they could not be immaterial if the issue was the inability of the Committee to probe subterfuges 'Because of the refusal of (Rumely) to produce pertinent financial records'. The Government did not rest this case upon that premise. The pertinency of the question which Rumely refused to answer was a contested issue upon the trial. The prosecutor's contention was that pertinency was established when it was shown that Rumely had registered as a lobbyist. Certainly, if the pertinency of the question rested even in part upon the Committee's desire to probe into possible subterfuges, the financial records would have been relevant and material. The prosecutor urged and the court held that the financial data was inadmissible.

"It is now said that contributions might be disguised by being made in the form of purchases of books. It is difficult to see how the purchase of a book at a dollar could be a contribution if it cost a dollar to produce the book. If the sales prices of the books exceeded the production costs in such amounts as to result in sizable profits, that fact would show in the financial records; the names of the purchasers would shed no light on that problem. No suggestion of this sort was made upon the trial or in the briefs before us.

"It is said that the names of the purchasers of the books were pertinent, since the Committee might wish to question those persons as to possible subterfuges. That pertinency was too remote on this record to sustain an abridgment of the freedoms of

speech and press. Subterfuges would appear, as the Committee itself evidently thought, upon examination of the financial records. Those records were not even admitted in evidence. Had they been admitted, and had they been suspected of being false, some further inquiry might have been in order.

But no such issue was raised in this case. On a record such as this, so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment. . . . No mention of a purpose to probe disguised contributions appears in the Government's brief before us.

"The view of the Buchanan Committee, as reflected in such portions of its hearings as are before us, and that of the prosecutor, the trial court, and the Government in its brief and argument here, is that the publication of books upon national issues is indirect lobbying, that sending books and bulletins to Congressmen is direct lobbying, and that the Buchanan Committee had authority to investigate lobbying, direct and indirect. That is the controversy before us, as we see it." (R. 201 App. 9)

"Certainly, in a criminal case we cannot take judicial notice of things the defendant is alleged to have said or done, not shown or offered to be shown in evidence; in fact, no request for such notice was made either in the trial court or before us. Nor can mere conclusions of the Committee serve in the place of such evidence." (R. 209 App. 23-24)

The Circuit Court properly concluded that there was not sufficient evidence in the record here to establish that the names of the purchasers of the books were pertinent to an inquiry into "lobbying activities".

We submit that the government by its present petition is seeking to have tried in the Supreme Court a case which was not tried, but which, on the contrary, the government refused to have tried in the trial court. The petition is a confession that the conviction of the defendant cannot possibly be sustained on the issues and evidence

actually submitted to the trial jury. This is clearly demonstrated by the opinion of the Circuit Court of Appeals. Thus the government is apparently driven to a contention that the conviction should be sustained because the defendant *might* have been convicted if other issues and other evidence had been submitted to the jury. This petition for a writ based on such a contention must be as unique in the annals of this Court as it is affronting to elementary concepts of justice and fair play.

### CONCLUSION

We submit that all the questions presented in the case actually tried in the District Court and reviewed on appeal, were correctly decided by the Circuit Court of Appeals in an opinion so comprehensive and soundly reasoned that there is no call for a review by this Court. There is no conflict with any other opinion or decision to warrant a review. The petition should be denied.

Respectfully submitted,

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the production of the names of the individuals who purchased the books, because the books attempted to influence public opinion and that such attempts to influence public opinion constitute "indirect lobbying".

The Buchanan Committee was created to investigate "lobbying activities" regarding Federal legislation. Such investigation might be lawful if confined to investigation of any *illegitimate* efforts to influence legislation; but any effort to investigate wholly legitimate efforts of citizens to express their opinions as to the desirability of legislation would exceed the Constitutional powers of Congress.

In this regard the Circuit Court of Appeals held that Congress can not investigate "all activities" intended to influence, promote or retard legislation indirectly by influencing public opinion and stated: "if Congress had authorized its committee to inquire 'generally into attempts to influence public opinion upon national affairs by books, pamphlets and other writings, its authorization would have been void'. (R. 202 App. 13). This conclusion is based upon the grounds that "to attempt to influence public opinion upon national affairs by books, pamphlets and other writings, is one of the fundamental freedoms of speech and press" and that "Congress has no power to abridge these freedoms unless urgent necessities in the public interest require it to do so". (R. 201 App. 12)

The petitioner erroneously contends that the opinion below holds that there can not possibly be any valid legislation or inquiry into efforts to influence public opinion. The fact is that the opinion specifically refutes the interpretation claimed by the petitioner, and, after acknowledging that certain circumstances might create a public necessity for Congressional inquiry, the court holds:

"In the case at bar no such dangerous factors are represented to us. There is no suggestion that the publication or distribution of these books and documents constitutes any public danger, clear or otherwise, present or otherwise." (R. 203 App. 14).

The cases cited by petitioner holding that publishers and news agencies are subject to laws of various sorts have no bearing on the problem presented here. The government is claiming that Congress has the power to inquire into the sale of books because these books attempt to influence public opinion. In its opinions dealing with regulations governing publications this Court has always been careful to point out that the regulations upheld did not bear upon the freedom of the publication except to the extent that ordinary business burdens bear upon the publishing business. *Associated Press v. Labor Board*, 301 U. S. 103, 81 L. Ed. 953, 57 S. Ct. 650 (1937); *Associated Press v. United States*, 326 U. S. 1, 89 L. Ed. 2013, 65 S. Ct. 1416 (1945); *Oklahoma Press Pub. Co. v. Walling*, 327 U. S. 186, 90 L. Ed. 614, 66 S. Ct. 494 (1946).

It is respectfully submitted that the opinion of the Circuit Court clearly and correctly sets forth the basis for its holding that Congress, without a clear showing of urgent necessities in the public interest, has no power to investigate attempts to influence public opinion upon national affairs by books, pamphlets and other writings and that, in establishing the Buchanan Committee, efforts to influence public opinion upon national affairs by books and pamphlets were not made subject to the authority given to investigate "lobbying activities".

**Requiring the Furnishing of Names of the Purchasers of Books and Pamphlets Constitutes a Clear Encroachment on the Rights Protected Under the First Amendment.**

The petitioner argues that the requiring of the respondent to furnish the names and addresses of all persons purchasing books sold by the C.C.G. "restrains no one from speaking, or writing or publishing his views in any manner", and that therefore "the disclosure called for by the Committee in no way impinges on the First Amendment right, either of the Committee for Constitutional Government, or of the purchasers of its books". (Pet. Brief P. 16).

We should not impose on this Court any lengthy dissertation on the rights protected against legislative restraint by the First Amendment to the Constitution. But since the petitioner takes so strong a position that these rights would not be violated here through the disclosure of the names of the purchasers we are under an obligation to assert them vigorously. A few quotations from the opinions of this Court should be more effective than any original argument.

In *Thomas v. Collins*, 323 U. S. 516, this court stated:

"The case confronts us again with the duty our system places on this court to say where the individual's freedom ends and the State's power begins. Choice on that border, now as always delicate, is perhaps more so where the usual presumption supporting legislation is balanced by the preferred place, given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment. Cf. *Schneider v. State*, 308 U. S. 147; *Cantwell v. Connecticut*, 310 U. S. 296; *Prince v. Massachusetts*, 321 U. S. 158. That priority gives these liberties a sanctity and a sanction not permitting dubious intrusions. And it is the character of the right, not

of the limitation, which determines what standard governs the choice. Compare *United States v. Carolene Products Co.*, 304 U. S. 144, 152-153.

"For these reasons any attempt to restrict those liberties must be justified by clear public interest, threatened not doubtfully or remotely, but by clear and present danger. The rational connection between the remedy provided and the evil to be curbed, which in other contexts might support legislation against attack on due process grounds, will not suffice. These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, must have clear support in public danger, actual or impending. Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation. It is therefore in our tradition to allow the widest room for discussion, the narrowest range for its restriction, particularly when this right is exercised in conjunction with peaceable assembly. It was not by accident or coincidence that the rights to freedom in speech and press were coupled in a single guaranty with the rights of the people peaceably to assemble and to petition for redress of grievances. All these, though not identical, are inseparable. They are cognate rights, cf. *DeJonge v. Oregon*, 299 U. S. 353, 364, and therefore are united in the First Article's assurance. Cf. 1 Annals of Congress 759-760." (P. 529, 530).

In *Lovell v. Griffin*, 303 U. S. 444, this court held that book publishers are included in the freedoms protected by the Constitution when it stated:

"The liberty of the press is not confined to newspapers and periodicals . . . The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion. What we have had recent occasion to say with respect to the vital importance of protecting this essential liberty from every sort of infringement need not be repeated. *Near v. Minnesota*, supra; *Grosjean v. American Press Co.*, supra; *DeJonge v. Oregon*, supra." (P. 452)

In *West Virginia State Board of Education v. Barnette*, 319 U. S. 624, the opinion of this Court stated principles, as to which we can assume there was and will be no dissent, in holding:

"The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which a legislature may have a 'rational basis' for adopting. But *freedoms of speech and of press, of assembly, and of worship may not be infringed on such slender grounds. They are susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect.*" (P. 639) - (Italics ours)

The invalidity of any attempt by the Congress to regulate the publication, distribution and purchase of concededly lawful printed material is so plain that an investigation by a committee "in aid of (such) legislating" cannot possibly be held to be a valid exercise of congressional power and the Court below correctly so held.

The petitioner argues that the inquiry does not involve private views as such but only seeks information as to how those private views were disseminated and that public disclosure of such information would restrain no one from publishing his views. In this connection the Circuit Court of Appeals stated:

"To publicize or to report to the Congress the names and addresses of purchasers of books, pamphlets and periodicals is a realistic interference with the publication and sale of those writings. This is another problem which we examined in the *Barsky* case, *supra*, and we there held that the public inquiry there involved was an impingement upon free speech. We are of the same view here. There can be no doubt, in that case or in this one, that the realistic effect of public embarrassment is a powerful interference with the free expression of views. In that case the tenets of Communism and the apparent

nature of the Communist Party created a public necessity for congressional inquiry. In the case at bar no such dangerous factors are represented to us. There is no suggestion that the publication or distribution of these books and documents constitutes any public danger, clear or otherwise, present or otherwise." (R. 202-203 App. 14).

The inquiries of the Buchanan Committee were of the character that would undoubtedly injure a publisher's business and scare away his prospective customers. No court can be respectfully asked to ignore these realities. Blind justice may be tolerable but not blind judges. "We may not shut our eyes to any facts of common knowledge". *Louisville Trust Co. v. Louisville N. A. & C. R. Co.*, 174 U. S. 674, 683. "To do this would be to shut our eyes to what all others see and understand". *U. S. v. Butler*, 297 U. S. 1, 61.

The "lady from Toledo" purchased 4000 copies of *The Road Ahead* to be sent to persons in her home town whose social, economic, moral or political opinions she thought it might influence. Surely she had a constitutional freedom to do this. But, if she had known that her name and address must be reported to Congress and would be sensationally publicized by a committee of Congress she might well have been deterred from making such a purchase.

Even more obvious would be the legislative restraint on large employers to deter them from buying the book published by the C.C.G. entitled *Why the Taft-Hartley Law?* Many an employer, seeking to counteract the notorious propaganda of all major labor organizations against this Act, and to enlighten public opinion as to its merits, would be normally inclined to purchase quantities of these books for distribution. But the enforced publicity of such purchases under the Buchanan Committee investigation would inevitably deter many such employers

from thus arousing antagonisms that would surely embarrass their efforts to maintain cordial relations with their employees and union organizations.

The restraints involved, in the public disclosure of the names and addresses of the purchasers of the books of the C.C.G. in a Congressional hearing investigating "Lobbying Activities", are obvious and substantial. There is no more serious violation of the rights of the American people than a legislative restraint in expressing and propagating their economic, social, moral or political opinions by speaking, printing and distributing them, and in thereby seeking legitimately to influence public opinion. These rights admit of no restriction or embarrassment directly or indirectly by legislative action of any character, no matter how apparently innocuous nor how plausibly justified.

As this Court stated in *Thomas v. Collins*, (Supra):

"The restraint is not small when it is considered what was restrained. \* \* \* If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty." (543)

### III

**There Is No Evidence in the Record to Support a Ruling That the Names of Purchasers of Books Published by Respondent's Employer Were Pertinent to the Buchanan Inquiry Into Lobbying Activities.**

The Government for the first time now takes the untenable position that a person purchasing books from the C.C.G. was supporting the C.C.G. and therefore the names of the purchasers were pertinent to the inquiry

into "lobbying activities" because the Buchanan Committee in its report to Congress had stated that they were unable to determine whether the C.C.G. was resorting to subterfuges because the C.C.G. had failed to produce "pertinent financial records".

The record clearly establishes and the Government admits that all of the financial records were produced or made available to the Buchanan Committee by respondent except for the names of the purchasers. (R. 200, App. 9-10) The pertinency of the names of the purchasers which the respondent refused to produce was the contested issue upon the trial of this criminal case.

The Government urged at both the trial and before the Circuit Court that pertinency in this case was established solely by the fact that respondent had registered under the Federal Lobbying Act, even though under protest. (R. 200).

The prosecution in a criminal case has the burden of not only pleading but proving all the essential elements of the crime charged; *Sinclair v. U. S.* 279 U.S. 263, yet the fact of registration *under protest* is the *only* evidence in the record and properly before this Court as to pertinency.

The trial judge specifically instructed the jury that—  
 "The nature of the activities of the defendant, or of the organization with which he was connected is not an issue in this case. It is your duty to disregard any speculation on the subject." (R. 176)

In the face of this charge the government *now* asks the Supreme Court to review this case and to hold that the defendant should have been convicted because he engaged in an activity which the trial court did not permit him to deny—but held to be not an issue in the case.

Certainly if pertinency of the names of the purchasers depended (as now urged by the Government) even in

addresses of the purchasers of the books. No contention was made at those hearings that he refused to give anything else. Upon the trial the prosecutor did not say that anything else was refused. On the contrary, he urged a different view. He insisted, and the court sustained his view, that, so long as the names of purchasers of books were not given, financial records on contributions and loans were immaterial to the issues in the case. But they could not be immaterial if the issue was the inability of the Committee to probe subterfuges "Because of the refusal of [Rumely] to produce pertinent financial records". The Government did not rest this case upon that premise. The pertinency of the question which Rumely refused to answer was a contested issue upon the trial. The prosecutor's contention was that pertinency was established when it was shown that Rumely had registered as a lobbyist. Certainly, if the pertinency of the question rested even in part upon the Committee's desire to probe into possible subterfuges, the financial records would have been relevant and material. The prosecutor urged and the court held that the financial data was inadmissible.

It is now said that contributions might be disguised by being made in the form of purchases of books. It is difficult to see how the purchase of a book at a dollar could be a contribution if it cost a dollar to produce the book. If the sales prices of the books exceeded the production costs in such amounts as to result in sizable profits, that fact would show in the financial records; the names of the purchasers would shed no light on that problem. No suggestion of this sort was made upon the trial or in the briefs before us.

It is said that the names of the purchasers of the books were pertinent, since the Committee might wish to question those persons as to possible subterfuges. That pertinency was too remote on this record to sustain an

abridgment of the freedoms of speech and press. Subterfuges would appear, as the Committee itself evidently thought, upon examination of the financial records. Those records were not even admitted in evidence. Had they been admitted, and had they been suspected of being false, some further inquiry might have been in order. But no such issue was raised in this case. On a record such as this, so slim a semblance of pertinency is not enough to justify inquisition violative of the First Amendment. We are also of opinion that, even if the purchases were really contributions but were merely in furtherance of an effort to influence public opinion, they were beyond the power of the Congress and of the Committee under its Resolution, a subject which we shall discuss in a moment. No mention of a purpose to probe disguised contributions appears in the Government's brief before us.

The view of the Buchanan Committee, as reflected in such portions of its hearings as are before us, and that of the prosecutor, the trial court, and the Government in its brief and argument here, is that the publication of books upon national issues is indirect lobbying, that sending books and bulletins to Congressmen is direct lobbying, and that the Buchanan Committee had authority to investigate lobbying, direct and indirect. That is the controversy before us, as we see it.

Appellant presents two principal contentions. He insists that the Buchanan Committee had no power to require him to produce or to reveal the names of purchasers of books, on two grounds, (1) that the Congress had no constitutional power to make that inquiry and (2) that the House had not by its Resolution empowered the Committee to make that inquiry. Both contentions were available to him.<sup>5</sup>

<sup>5</sup> *McGrain v. Daugherty*, 273 U. S. 135, 71 L. Ed. 580, 47 S. Ct. 319 (1927).